

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT SPR11-53

Title	Action Requested
Tribal Court Protective Orders: Registration and Enforcement	Please review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 5.386; amend rule 2.300; approve form DV-610	January 1, 2012
Proposed by	Contact
California Tribal Court/State Court Forum	Ann Gilmour, 415-865-4207
Hon. Richard Blake, Cochair	ann.gilmour@jud.ca.gov
Hon. Richard D. Huffman, Cochair	
Family and Juvenile Law Advisory Committee	Jennifer Walter, 415-865-7687
Hon. Kimberly Nystrom-Geist, Cochair	jennifer.walter@jud.ca.gov
Hon. Dean Stout, Cochair	

Summary

This proposal would establish an efficient and consistent statewide procedure for California superior courts to register protective orders issued by tribal courts in California under Family Code section 6404.¹ Registration of tribal court protective orders will help ensure that law enforcement agencies enforce these orders uniformly and consistently.

Discussion

In May 2010, former Chief Justice Ronald M. George established the California Tribal Court/State Court Forum (forum) to discuss issues of mutual importance to tribal and state justice systems. This forum is composed of tribal court judges from throughout the state, local Superior Court judges, a member of the Judicial Council, chairs of several Judicial Council advisory committees, and the director of Native American Affairs for the State Attorney General's Office. The forum is charged with identifying issues concerning the working relationship between tribal and Superior Courts and recommending ways to address these issues.

¹ Family Code section 6401(1) defines "foreign protection order" as a protection order issued by a tribunal of another state. Section 6401 (7) defines "state" to include an Indian tribe or band.

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There are approximately 20 tribal courts in California. Many tribal courts issue protective orders. Federal and state law mandate full faith and credit and enforcement of tribal court protective orders by Superior Courts and law enforcement agencies. (18 U.S.C. § 2265; Fam. Code §§ 6401 - 6405). However, tribal court judges and tribal advocates report that in practice, protective orders issued by tribal courts are not uniformly and consistently enforced because tribal courts and tribal law enforcement agencies in California do not have access to the law enforcement databases maintained by the Department of Justice. If California state and local law enforcement officials are not able to verify the validity of tribal court protective orders in the statewide protective order registry, also known as the California Restraining and Protective Order System (CARPOS) or the California Law Enforcement Telecommunications System (CLETS), these orders are generally not enforced.

The forum has identified a practical solution to this problem: an efficient statewide registration procedure for tribal protective orders. Once a tribal protective order is registered with a California Superior Court, it is automatically entered into the statewide database as if it were a Superior Court protective order, in the same way that a Superior Court protective order is entered. California law provides for the registration of tribal court protective orders with the Superior Court by means of Judicial Council form DV-600 *Register Out-of-State Restraining Order*. However, the current registration procedure poses challenges to Native American victims and results in public safety concerns. In most jurisdictions, the current registration procedure requires parties to go to the Superior Court registry to file the original tribal court protective order and DV-600 to ensure the order's entry into the statewide database. Because many tribal courts in California are in remote locations and many victims of domestic violence lack transportation, this procedure poses significant challenges for litigants and has resulted in delayed enforcement of valid court orders.

In several counties, tribal courts and the local Superior Courts have adopted protocols to allow for the fax registration of tribal court protective orders with the Superior Court. These local protocols have removed barriers that Native American victims of domestic violence face in obtaining protection. However, not all tribal and Superior Courts have reached similar arrangements. Some tribal court judges report ongoing problems with registration and enforcement of protective orders. Reasons include lack of awareness and understanding of tribal court protective orders, the need for clients to travel long distances to the nearest Superior Court registry, and individual court users' lack of access to transportation.

Rule 2.304 of the California Rules of Court authorizes a court, by local rule, to allow direct fax filing. Currently, 24 of the 58 county courts have adopted a local rule allowing for direct fax filing. Of the 20 tribal courts currently operating in California, 9 are located in counties that do not currently provide for direct fax filing. Of those counties, 2 have already entered into

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arrangements with the tribal court(s) located there concerning the registration of tribal court protective orders.

Rule 5.522 of the California Rules of Court authorizes fax filing of certain documents in juvenile court proceedings in counties that permit fax filing. Currently rule 5.522(g) requires the clerk's office to designate a separate fax machine to be dedicated solely to the receipt of fax- filed documents in juvenile proceedings.

Both rules 2.304 and 5.522 provide that mandatory fax cover sheets accompany all fax filings.

Rule 2.304 contemplates a fee for fax filing. However, section Family Code 6404(b) specifically states "[n]o fee may be charged for the registration of a foreign protection order." It is anticipated that only a relatively small number of tribal court protective orders will need to be filed in any given county, so the fiscal impact of not assessing a fee should be minimal.

To ensure that all protective orders issued by tribal courts in California are efficiently and uniformly given recognition as required by Family Code section 6404, the forum and the Family and Juvenile Law Advisory Committee (committee) propose adoption of a statewide rule of court that would require each superior court, upon the request of a tribal court within the county, to adopt a procedure to allow for the fax or electronic registration of protective orders issued by the tribal court.

Specific Comments Requested

In addition to inviting comment on all aspects of the proposal, the committee requests specific feedback on the following issues:

1. What are appropriate procedures to confirm receipt of fax or emailed registration requests and how to get conformed copies of orders from the superior court to the tribal court and ultimately to the protected person.
2. Whether rule 5.522(g) should be amended to permit courts to use fax machines currently dedicated to the receipt of fax filed documents in juvenile proceedings to also be used for receipt of faxed registrations of tribal court protective orders.

Attachments

1. Cal. Rules of Court, rules 2.300 and 5.386 at page 4.
2. Forms DV-610 at page 5.

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California Rules of Court, rule 2.300 (a) would be amended and rule 5.386 would be added effective January 1, 2012 to read:

1 **Rule 2.300 Application**
2

3 (a) Proceedings to which rules apply
4

5 The rules in this chapter apply to civil, probate, and family law proceedings in all trial
6 courts. Rule 5.386 applies to fax filing of a protective order issued by a tribal court. Rule
7 5.522 applies to fax filing in juvenile law proceedings.
8

9 (b) ***
10
11

12 **Rule 5.386. Procedures for filing a tribal court protective order**
13

14 (a) **Request for written procedures for filing a tribal court protective order**
15

16 At the request of any tribal court located within the county, a court must adopt a written
17 procedure or local rule to permit the fax or electronic filing of any tribal protective order
18 that is entitled to be registered under Family Code section 6404.
19

20 (b) **Process for registration of order**
21

22 The written procedure or local rule developed in consultation with the local tribal court or
23 courts may provide a process for:
24

- 25 (1) The tribal court or courts to contact a representative of the superior court to inform
26 him or her that a request for registration of a tribal court protective order will be
27 made;
28
29 (2) Confirmation of receipt of the request for registration of the order; and
30
31 (3) Return of certified copies of the registered order to the tribal court.
32

33 (b) **No filing fee required**
34

35 In accordance with Family Code section 6404(b), no fee may be charged for the fax or
36 electronic filing registration of a tribal court protective order.
37

38 (c) **Facsimile coversheet**
39

40 The *Facsimile Transmission Cover Sheet for Registration of Tribal Court Protective Order*
41 (form DV-610) may be used when fax filing a tribal court protective order.
42

Facsimile Transmission Cover Sheet for Registration of Tribal Protective Order

Clerk stamps date here when form is filed.

**DRAFT
Not approved by the
Judicial Council**

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

To:
From:

① Protected person's name: _____

② Restrained person's name: _____

③ Please file the following transmitted form DV-600 and attached Tribal Court Protective Order issued by the tribal court.

④ This fax contains a total of _____ pages including the cover sheet.

⑤ Date fax sent: _____

⑥ Name and contact information of tribal court that issued order:

Name of court: _____

Mailing address: _____

Telephone number: _____

Fax number: _____

Contact person: _____

E-mail (optional): _____

Tribal Court case file number: _____

- ⑦ Please process and send copies to tribe at the address above or
- protected person at the mailing address on the attached Tribal Court Protective Order
- other (describe): _____

⑧ Other instructions:

If you do not receive all pages or have any other problems or questions about this transmission, please call (insert name): _____ at (insert telephone number): _____.

Item SPR11-53 Response Form

Title: Tribal Court Protective Orders: Registration and Enforcement (adopt Cal. Rules of Court, rule 5.386; revise rule 2.300; approve form DV- 610)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.